

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119,
Port Charlotte, Florida
Minutes of Regular Meeting
November 10, 2014 @ 1:30 p.m.

Call to Order

Chair Hess called the meeting to order at 1:31 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

Roll Call

PRESENT

Paula Hess
Michael Gravesen

Stephen Vieira
Paul Bigness

ABSENT

Ken Chandler

ATTENDING

Joshua Moya, Assistant County Attorney
Gayle Moore, Recording Secretary

APPROVAL OF MINUTES

The minutes of October 13, 2014 were approved as circulated.

ANNOUNCEMENTS

Chair Hess consulted with Assistant County Attorney Moya regarding item 7 on the agenda, which she believed would not be heard since related Amendment 2 had failed in the general election. **Mr. Cullinan** confirmed this.

Upon the oath being administered, the meeting commenced.

PETITIONS:

SE-14-016

Quasi-Judicial

Commission District II

Michael Haymans, agent for Burnt Store Colony Resident Owner Association, is requesting an expanded use special exception to allow the expansion of a lawfully existing conforming use, consisting of a boat and recreational vehicle store yard, to property which is abutting the existing use, in the Agriculture Estate (AE) zoning district. The property address is 25350 Zemel Road, Punta Gorda, which is the West 146.06 feet of Parcel P22-1, more specifically described as the West 146.06 feet of the South one half of the Southwest one quarter of the Southwest one quarter of the Southeast one quarter, less the Northerly 30.00 feet thereof, of Section 20, Township 42 South, Range 23 East.

Staff Presentation

Shaun Cullinan, Planning and Zoning Manager, presented the petition, noting that it is a unique process which is currently in the Charlotte Code but has never been used; it is an "expanded use Special Exception" which comes before the Planning and Zoning Board for a recommendation and then goes before the Board of Zoning Appeals for a final Approval or Denial. **Mr. Cullinan** explained that in this particular case, the applicant is requesting the special exception to allow expansion of a lawfully-existing conforming use onto property which is abutting the existing use for the purpose of providing a second entrance into the mobile home park property for safety reasons. The existing storage and maintenance yard at the corner of the property would be expanded into adjacent property which the park association would purchase and then the storage area would be increased and the second entrance constructed on that newly-purchased property.

Questions for Staff

Chair Hess asked about the fact that this type of hearing was being written out of the Land Development Regulations; **Mr. Cullinan** agreed that was the case but noted that until the new Code is adopted at the end of this month, such requests can still be heard. The applicant's agent would also be bringing forward one more similar request before this type of hearing is no longer available.

Applicant's Presentation

Michael P. Haymans, Esq. agent for the Petitioners, stating that he has been sworn, gave brief description of the conditions leading to the request. He clarified that the park association was not being forced to add the extra entrance, but that it had been suggested as a good idea and agreed to by the park owners.

Chair Hess indicated that she did not have any questions and felt that the petition met the six standards for requesting a special exception; she asked if any other Board members had questions. **Mr. Vieira** sought to clarify if the new entrance would be a main or an ancillary entrance into the park; **Mr. Haymans** confirmed that it would be ancillary. **Mr. Bigness** asked about the buffering; **Mr. Haymans** indicated it would be Type D.

Public Input

None.

- **Mr. Vieira** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

Discussion

Chair Hess noted there seemed to be no issues with the neighbors.

Recommendation

Mr. Gravesen moved that SE-14-016 be sent to the Board of Zoning Appeals with a recommendation of *Approval*, based on the findings and analysis in the staff report dated

October 27, 2014, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

PA-14-09-13

Legislative

Commission District II

An Ordinance pursuant to Section 163.3187(1)(C), Florida Statutes, adopt a small scale plan amendment to change Charlotte County FLUM Series Map #1: 2030 Future Land Use, from Parks and Recreation (PKR) to Commercial (COM); for property located at 2531 and 2551 Taylor Road, in the Punta Gorda area; containing 8.7± acres; Commission District II; Petition No. PA-14-09-13; applicant: ONMI Sports, LLC; providing an effective date..

Staff Presentation

Jie Shao, Planner III, presented the findings and analysis of the petition with a recommendation of *Approval*, based on the reasons stated in the staff report dated October 17, 2014, giving brief details regarding the history of prior petitions concerning this property. The prior businesses failed, and the currently requested amendment is intended to enhance the commercial uses that would be allowed on the property.

Questions for Staff

None.

Applicant's Presentation

Geri Waksler, Esq. agent for the Petitioners, gave further details about the prior business attempt by the company which drove the previous petition, and the need to request further land use changes in order to convert the site to another, more viable use. She touched briefly on the type of buffering that will be required between the site and the neighboring residential areas.

Public Input

None.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Vieira** with a unanimous vote.

Discussion

Chair Hess indicated she was in favor of recommending approval, noting that the subject site was in her district, and that the change would be welcome, especially as most of the surrounding properties were commercial already. No other Board members had comments.

Recommendation

Mr. Gravesen moved that PA-14-09-13, be sent to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated October 17, 2014, along with the evidence presented at today's meeting, second by **Mr. Bigness** and carried by a unanimous vote.

NOPC-14-07-11

Legislative

Commission District I

A Resolution pursuant to Section 380.06, Florida Statutes, amending the Development Order and Map H for the Sandhill Development of Regional Impact (DRI) to reduce open space by 5.84 acres; to eliminate the 84.09 acre golf course by replacing it with 1) 6.48 acres of commercial area with 43,000 square feet of commercial development; 2) 19.56 acres of assisted living area with 458 beds; 3) 47.64 acres of industrial park with 365,000 square feet of industrial development and 4) 16.25 acres of residential development with 26 multi-family units; and to correct scrivener's errors; for property located south of the DeSoto County Line, north of Rampart Boulevard, east of Loveland Boulevard and west of the Deep Creek area; Section 7, Township 40 South, and Range 23 East, in the Port Charlotte area, currently containing a total of 713.12± acres; Commission District I; Petition No. NOPC-14-07-11; Applicant: ATM II, LLC; providing an effective date.

Sandhill Development Agreement Legislative

Commission District I

Conduct the first public hearing to consider entering into a Development Agreement formulated to comply with the Florida Local Government Development Agreement Act (ss. 163.3220 of F.S.) for the Sandhill Development of Regional Impact (DRI). The land subject to the Development Agreement consists of 84± acres located in the northeast quadrant of the intersection of Interstate 75 and Kings Highway, in the Port Charlotte area. The project proposes 43,000 square feet of commercial development, 458 assisted living and memory care beds, 365,000 square feet of industrial development and 26 multi-family dwelling units. The Development Agreement sets forth the commitments by the Developer and the County as to transportation improvements necessary to ensure concurrency on all impacted regional roads and intersections as a result of the development of the Project.

Staff Presentation

Jie Shao, Planner III, presented the findings and analysis of the petition with a recommendation of Approval, based on the reasons stated in the staff report dated October 24, 2014, giving brief details regarding the background of this Development of Regional Impact. She gave an overview of the major changes being sought in the petition, noting that the other changes were minor, amounting to correction of scriveners' errors; maps showing the intended changes under the petition were also displayed and discussed. **Ms. Shao** then discussed the Sandhill Developers Agreement, which is subsidiary to and a part of the proposed change, setting forth the commitment by the developer and the County regarding transportation improvements necessary to ensure concurrency on the impacted roads and intersections. The NOPC request has been submitted to the Southwest Florida Regional Planning Council which concluded that the proposal is not a substantial deviation.

Questions for Staff

Chair Hess asked about the notation indicating the applicant would like feedback from the Commission before they finalize the industrial uses; **Ms. Shao** indicated that this involved the recent proposed changes to the Land Development Code in the section dealing with the industrial zoning district.

Applicant's Presentation

Geri Waksler, Esq. agent for the Petitioners, gave further details about the history of this DRI, which has been in existence since 1981, and described how the requested changes to the DRI have mirrored changes in the area and its economy over the years, including the building of Kings Highway. The current applicant now owns all the lots which were previously individually owned, as well as the abandoned golf course which they now plan to eliminate and replace with commercial, ACLF facilities, some light industrial and 26 additional multi-family units.

Ms. Waksler next turned to the maps, making a public commitment on behalf of the developers to create the lakes shown in the new maps with the intent of providing buffers to the existing residential uses. She also spoke to the issue of neighboring residents' requests for specific site plans showing the industrial lands allocation, and she noted that land use entitlements still have to be determined and approved in order for specific plans to be made. **Ms. Waksler** also spoke to the Map H and what Florida Statutes requires it to show, noting that it does meet these requirements. Next she turned to the question of the road improvements that would be required of the developers, putting it in the context of similar road improvements already made by other developments within the Sandhill DRI (e.g., Wal-Mart). **Ms. Waksler** also spoke to the issue of Levels of Service for traffic, and how it is determined. She spoke about the reaction of existing Newport Residents to the plan which was, in some measure, positive due to the upgrading of the area, including the stormwater management system; she also mentioned the approval responses of the other agencies.

In closing, Ms. Waksler addressed Chair Hess's question regarding the additional paragraph which came about because of the ULDC work at the time this application was first submitted in the summer.

Public Input

Mr. Fred Schnittke spoke about the traffic, specifically on Kings Highway and whether the traffic study takes into account future developments which may be coming in further north on Kings Highway. **Ms. Waksler** responded that traffic studies factor in a growth rate, doing both near-term and long-term projections; this takes new and future developments into account. **Mr. Schnittke** indicated he was concerned that the neighboring counties (Charlotte and DeSoto) might not be communicating about their respective plans; the process for communicating about such matters was addressed by **Mr. Cullinan**, who noted that the DeSoto County development which concerned Mr. Schnittke is not a Development of Regional Impact, meaning that it was not something that Charlotte County would comment on; additionally, this is a long-standing plan which is being updated for current conditions. This Sandhill DRI, on the other hand, would have been provided to DeSoto County for review and comment, because it does have a regional impact. It was suggested that Mr. Schnittke attend the DeSoto County hearings on their project in order to have his concerns heard. **Mr. Vattikuti** commented on this issue as well, noting the traffic study took DeSoto County plans into account.

[The recording computer lost power at approximately 2:08 p.m.; the Board session had to be suspended while IT staff repaired the outage, which was restored, and the meeting reconvened, at 2:36 p.m.)

Mr. George Wojtkiewicz spoke about traffic concerns during the power outage.

Chair Hess reopened the meeting by responding to the gentleman that had raised a question regarding the Development Agreement; she noted this document sets forth the commitments by the developer and the County as to transportation improvements necessary to ensure concurrency on all impacted regional intersections and roads as a result of the development of the project. She asked Mr. Vattikuti to return to the podium to restate his information. **Mr. Vattikuti** returned to explain the traffic studies, the results of which are applicable not only to Charlotte County but to the neighboring counties as well. He indicated that originally there were plans to widen King Hwy to four lanes, however DeSoto County not ready when Charlotte County was ready, and the project is awaiting all participants to be ready. The new DeSoto County development is not happening yet, but when it goes forward, they should be ready to widen, and we will be ready to widen then also. **Mr. Vattikuti** also discussed the current traffic capacity on that road.

Chair Hess then directed proceedings back to the public comment portion of the hearing, but asked commenters to remember that this is not a discussion of current conditions, but future conditions. She also indicated that, as far as intergovernmental relations are concerned, that is a matter for the Commissioners to address, not this Board.

Ms. Linda McGill, resident of the County, described herself as a caretaker for older relatives, who wished that she had more options for assisting in this care, and had paid a great deal of money for the care choices available, because of a lack of other options for care. She believes others who have yet to move here will need these same options in time to come.

Mr. Frank Ferko, resident of the area who worked at the golf course for many years. He spoke about the many failed developments in the area in the past. He said he felt that the new people coming in are reputable, and he would like to see the place improved.

Mr. Steve Fregeau, resident of the County, said he was very much in support of the development as he feels the current conditions are disgusting.

Ms. Darlene Rains, resident of the County, stated that the county desperately needs this kind of housing. She felt that her children have no reason to stay in the County and that choices have to be made for the entire County that will provide the diversification that would keep people here. She spoke in favor of the project and the future options the ACLF will provide.

Mr. Tom Day spoke in support of the project, indicating he is also specifically in favor of the ACLF options.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Vieira** with a unanimous vote.

Discussion

Chair Hess indicated that she was happy to hear the positive comments and hoped Ms. Waksler would tell the developer of the positive response. She also commented again to the point of the commitments made in the Developers Agreement. She said that she saw the changes as being an update in support of what's current economically viable (plus the correction of scriveners' errors) and she agreed with the staff recommendation. Mr. Bigness commented on the size of the investment which would bring jobs into the community; he also agreed on the need to be supportive of elder residents by providing options for them.

Recommendation

Mr. Vieira moved that NOPC-14-07-11, be sent to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated October 24, 2014, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

Recommendation

Mr. Vieira moved that the Sandhill Developers Agreement associated with NOPC-14-07-11 be sent to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated October 24, 2014, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

PA-14-09-14-LS

Legislative

Countywide

Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Plan Amendment to the Department of Economic Opportunity (DEO) for review and comments; the request is to amend FLU Appendix I: Land Use Guide by revising the Mineral Resource Extraction (MRE) Future Land Use Map (FLUM) category and amending the requirements #2 and #3 under the "Special Provisions" subsection of the MRE FLUM category; Petition No. PA-14-09-14-LS; Applicant: Charlotte County Board of County Commissioners; providing an effective date.

Staff Presentation

Elizabeth Nocheck, Planner II, presented the findings and analysis of the petition with a recommendation of Approval, based on the reasons stated in the staff report dated October 27, 2014, giving brief details regarding Commission directions to staff for revising the language and relocating the language within the ULDC, and revising the County's Comprehensive Plan with the intention of removing duplicative and regulatory language from the Plan and relocating it in the Land Development Regulations as appropriate. The change in language is in support of commercial excavations which are about to expire and which could not renew their permits based on existing language in the Comp Plan; this

language change would permit those renewals to go forward. There are also two language changes ("Group III" to "Commercial"; "Hearing Examiner" to "Excavation Administrator") to ensure consistency between the ULDC and the Comp Plan.

Questions for Staff

Chair Hess indicated she had no questions, nor were there any from the other Board members.

Public Input

Ms. Deborah Highsmith, resident of Charlotte County, approached the lectern and requested specific maps be displayed as by prior arrangement with staff. A short period was spent to organize this. **Mr. Moya** suggested to staff that exhibit numbers be added to the maps Ms. Highsmith was going to be referring to; these would be designated Exhibit A-1 (Charlotte County Potable Water Protection Overlay), A-2, A-3.

Ms. Highsmith, began by referencing letters from Washington Loop homeowners who have written in on this petition, plus prior correspondence by the Conservancy of Southwest Florida. She first referred to Future Land Use Map 24, MRE Prohibited Locations noting that everything in purple on that map (which is a compilation of data sources from FDEP and both Water Management Districts) is a prohibited location; she noted that none of the data used in creating that map is changing, only the fact that expiring mines don't have to apply for a change in land use or zoning.

Ms. Highsmith next referred to Map 4, which is the watershed overlay district and applies to Shell Creek and Prairie Creek, which supply potable water to Punta Gorda.

The third map overlays the Potable Water Protection Overlay District with Group III excavations (this is Exhibit A, mentioned above) which she said shows only two permits are affected by this policy, which **Ms. Highsmith** said she felt conflicted with the notion that many operations are affected by the policy being changed. She also noted that at least one operator in this situation did not challenge the language changes adopted under SmartCharlotte 2050 on behalf of his permit which would expire in 2015. She stated that the changes being proposed today are big changes if considered as benefitting so few, compared with protecting the drinking water for the City of Punta Gorda. She also stated her feeling that approval by the Excavation Administrator instead of a Hearing Examiner removed a lot of the excavation activity from the public process.

Chair Hess asked what Ms. Highsmith's suggestion would be for the mine operator; **Ms. Highsmith** suggested that he pursue a land use/zoning change as he has a right to.

Excavation Administrator / County Engineer Joanne Vernon responding to Ms. Highsmith challenged the statement that only one person would be affected; there are multiple mines that will be unable to apply for the rezoning/FLUM amendment due to being in the purple area shown on the map. Responding to a question from Mr. Moya, **Ms. Vernon** stated that there are 9 affected mines, though not all are fully within the purple area, and not all expire in 2015.

Ms. Waksler spoke next, noting that she represents three of the nine mines. She provided some history of the changes in operational requirements over time, and how operators tried to meet the new requirements whenever changes were made. Then the economy changed, slowed down their business, and they had no chance to recoup their outlays. The Land Development Code changes recognized that situation and provided that, if these permitted mines were approved and have been operating in compliance with the terms of those permits, and if operators were willing to bring the mines up to any new standards adopted in the meantime and pay any new fees required, then they may be able to get an extension to finish out the originally-approved mine. In other words, she said, this for those who have played by the rules, to be grandfathered in.

Ms. Julianne Thomas, Conservancy of SWFLA, noted the requirements in law that Comprehensive Plans be based on data and analysis; in this case, there is no change to data and analysis and the change proposed is not supported by the existing data and analysis, therefore the proposed change is not proper under Florida law. If this change is needed, it should be supported with new data and analysis. **Chair Hess** asks if Ms. Thomas had made this point to the Commissioners; **Ms. Thomas** indicated yes, but noted that the ULDC is not required to have data and analysis so the Commissioners were not persuaded. Further discussion ensued regarding Ms. Thomas's opposition to the previous changes in the Comp Plan.

Ms. Vernon responding to a question about the review of existing data and analysis, particularly the requirement for a half-mile overlay on the watershed, asking both DEP and Southwest Florida Water Management District how they regulate this particular issue. She was told that they review everything on a case by case basis, and each mine has to prove they won't cause any adverse impacts on the water.

Mr. Moya asked if all these current mines have their DEP and SWFWMD permitting; **Ms. Vernon** responded that they do.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Vieira** with a unanimous vote.

Discussion

Chair Hess said she felt this amendment makes the Comp Plan consistent with the Land Development Regulations and removes duplicative regulatory language so it is appropriate.

Mr. Bigness spoke in support of the language change, noting that mines are a service that is necessary to construction and one which is fully regulated.

Recommendation

Mr. Gravesen moved that PA-14-09-14-LS be sent to the Board of County Commissioners for transmittal to the Department of Economic Opportunity with a recommendation of *Approval*, based on the findings and analysis in the staff report dated

October 27, 2014, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

Temporary Uses

Legislative

Countywide

An Ordinance amending Charlotte County Code Chapter 3-9, by revising Section 3-9-95.1, Temporary Uses, and renumbering as Section 3-9-87; providing for revised application process and fees; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Shaun Cullinan, Planning and Zoning Manager, presented brief details regarding the need for this minor amendment, originally requested by the Department of Public Works and the Sheriff's Department, to provide standardized criteria for approving road closures associated with Temporary Use permits.

Questions for Staff

None.

Public Input

None.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Vieira** with a unanimous vote.

Discussion

Chair Hess spoke to the issue of whether the property could be used as zoned, balanced.

Recommendation

Mr. Gravesen moved that revisions to the Temporary Use Regulations be sent to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated October 24, 2014, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

Agenda item 7, regarding Medical Marijuana, was not presented to the Board, based on the failure of the proposed amendment in the general election.

Mr. Cullinan introduced new planner, Anthony Rodriguez, from New Jersey. He also had some interesting news regarding the decision to begin televising this Board's meetings, to keep CCTV active and vibrant, starting in January 2015.

There being no further business to come before the Board, the meeting was adjourned at 3:21 p.m.